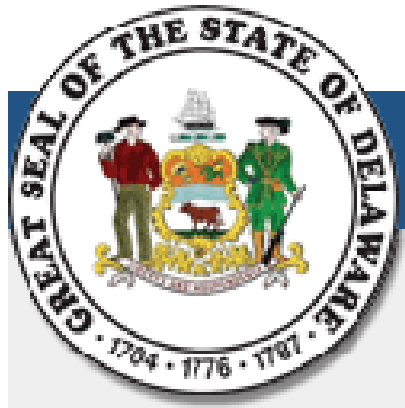


# STATE OF DELAWARE



## **Public Service Commission**

861 Silver Lake Blvd.  
Suite 100 Cannon Building  
Dover, DE 19904

## Request For Proposals For Rate Counsel

**Bid Number: PSC OSRC 12192011**

**Bid Closing: January 18, 2012; 3:00 p.m. EST**

# REQUEST FOR PROPOSALS FOR RATE COUNSEL ISSUED BY THE DELAWARE PUBLIC SERVICE COMMISSION

## Executive Summary

The Delaware Public Service Commission (“PSC”) is issuing this Request for Proposals (“RFP”) for the State of Delaware. The PSC seeks to engage an attorney or law firm to act as outside Legal Counsel (“Rate Counsel”) in connection with public utility regulatory matters.

The PSC works to ensure safe, reliable and reasonably priced electric, natural gas, water and wastewater services. The PSC also has limited regulatory authority over telephone and cable television rates and services. The PSC does not regulate the Delaware Electric Cooperative or utilities that are owned by municipalities. Rate Counsel will assist the PSC during rate cases or with other regulatory matters.

The PSC anticipates that, after conducting interviews, it may select more than one attorney or firms to act on behalf of the PSC as Rate Counsel. The PSC reserves the right to award multiple contracts if it determines that such an award is in the best interest of the State of Delaware (“State”). As needed, from time to time, the PSC may engage the authorized Rate Counsel to provide legal services consistent with the scope of this RFP related to certain public utility regulatory matters.

This RFP will define the scope of the work to be performed, the requirements the bidding attorney or law firm (“Bidder”) must address in its response, the method for response, and the administrative requirements that must be followed. The PSC will advise potential Bidder of changes to any dates as may be necessary. The PSC also reserves the right to modify and/or cancel this solicitation at any time during the RFP process.

## RFP Schedule

ID	Date/Time	Activity
1	December 19, 2011	Request for Proposal issued, posted on the State’s website at <a href="http://bids.delaware.gov">http://bids.delaware.gov</a> and the Attorney General’s website at <a href="http://attorneygeneral.delaware.gov">http://attorneygeneral.delaware.gov</a> .
2	January 4, 2012	All Bidder questions regarding RFP are due
3	January 6, 2012	State issues answers to questions regarding the RFP via State of Delaware website at <a href="http://bids.delaware.gov">http://bids.delaware.gov</a> and Attorney General’s website at <a href="http://attorneygeneral.delaware.gov">http://attorneygeneral.delaware.gov</a>
4	January 18, 2012; <b>3:00 p.m. EST</b>	<b>RFP Response due date</b>
5	January 23, 2012	Begin Bidder Interviews (subject to change)
6	January 30, 2012	Begin Negotiations (subject to change)
7	February 6, 2012	Contract awarded (subject to change)

All Bidders should submit: (1) an original and 5 bound copies of their proposals (“Proposal”) and (2) one electronic version to the contact person. Proposals may be mailed or hand-delivered for receipt no later than 3:00 p.m. EST on January 18, 2012 (“Closing Date”). All timely Proposals become the property of the State. Requests for extensions of the Closing Date will not be granted. Any Proposal or request for modification received after 3:00 p.m. on the Closing Date is late and may not be considered. The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), U.S. Mail, or by hand. Proposals shall be submitted to:

Cynthia L. Collins  
Director of Outside Counsel, Deputy Attorney General  
Carvel State Building  
820 N. French Street, 6<sup>th</sup> Floor  
Wilmington, Delaware 19801  
Direct Dial: (302) 577-8405  
Fax: (302) 577-6630  
Email: [Cynthia.Collins@state.de.us](mailto:Cynthia.Collins@state.de.us)

Each proposal must be accompanied by a transmittal letter that briefly summarizes the Bidder’s interest in providing the required professional services. The transmittal letter must also clearly state and justify any exceptions to the requirements of the RFP that the applicant may have taken in presenting the Proposal. The PSC reserves the right to deny any and all exceptions taken to the RFP requirements.

The cost of preparing Proposals will be borne solely by the Bidders. Proposals shall address all the questions posed by the PSC in the order in which they appear in this request.

RFP Designated Contact:

Please submit all questions and requests for information to:

Cynthia L. Collins  
Director of Outside Counsel, Deputy Attorney General  
Carvel State Building  
820 N. French Street, 6<sup>th</sup> Floor  
Wilmington, Delaware 19801  
Direct Dial: (302) 577-8405  
Fax: (302) 577-6630  
Email: [Cynthia.Collins@state.de.us](mailto:Cynthia.Collins@state.de.us)

All questions submitted, along with answers, will be consolidated into a single Q&A document. The source of the questions will not be disclosed in the document. The Q&A document will be posted on the State’s website at <http://bids.delaware.gov> and the Attorney General’s website at <http://attorneygeneral.delaware.gov>.

**1.0 GENERAL INFORMATION****1.01 Project Scope and Objectives**

The State seeks qualified firms and individuals to provide legal counsel to and representation for the PSC in certain matters relating to regulation of electric, natural gas, water, wastewater, telephone and cable television companies. These matters include areas involving litigation before the PSC (including reviewing and editing prefiled testimony, conducting direct and cross-examination of witnesses, preparing pre- and/or post-hearing briefs and exceptions); representing the PSC on appeals of a PSC decision, reviewing and editing consultants' reports; representing the PSC Staff in rate cases and other dockets relating to formal complaints, investigations and PSC regulations; and providing legal advice to the PSC and its Staff.

**1.02**

Selected Rate Counsel will work with the Deputy Attorney General ("DAG") assigned to the PSC. From time to time, the DAG may refer the Rate Counsel to work directly with the PSC Staff, as necessary. All advice is to be provided directly to the DAG or to one of the employees of the PSC, as referred by the DAG.

**2.0 MINIMUM REQUIRED QUALIFICATIONS****2.01 Experience**

- A. The Bidder must have been in business or admitted to the Delaware bar for at least three (3) years.
- B. The Bidder should have at least five (5) or more years' prior experience in representing clients before the Delaware Courts.
- C. The Bidder should have at least five (5) or more years' prior experience in representing clients in matters related to the regulation of public utilities.
- D. The Bidder must have a thorough understanding of public utilities rate setting and regulation concepts and at least five (5) years' demonstrated experience;
- E. The Bidder must designate a lead attorney licensed to practice law with five (5) or more years experience in the above areas.

## **2.02 Professional Liability Insurance**

The Bidder shall agree to maintain in full force and effect during the term of the engagement professional liability insurance in an aggregate amount of not less than \$5 million. In order to satisfy this requirement, the Bidder must:

- A. Include a statement in its Proposal affirmatively responding to this requirement; and
- B. Include in its Proposal either:
  - 1) A certificate of insurance or letter from its insurer demonstrating that the Bidder meets this requirement, or
  - 2) A commitment letter or other evidence, satisfactory to the contact person, that Bidder will have such coverage as of the date the engagement commences.

If the Bidder is a joint venture, and one party of the joint venture does not presently have such liability insurance, this requirement may be satisfied if the members of the joint venture include in their proposal evidence, satisfactory to the contact person, that all members of the joint venture will have such coverage as of the date the engagement commences, either through actual insurance policies or an indemnity agreement by the properly insured firm, in form and substance acceptable to the PSC.

## **2.03 Bidder's Capacity**

Each Bidder must demonstrate the capacity to perform the type of services needed by the PSC described in Section 1.01 above. The Bidder must be available at all times to render services required under the engagement.

## **3.0 TECHNICAL PROPOSAL FORMAT**

The following information shall be provided in each proposal in the order listed below. A Bidder is expected to provide a response for each requirement listed in this RFP. Failure to respond to any request for information within this proposal may result in rejection of the proposal at the sole discretion of the PSC.

### **3.01 General**

All technical proposals shall be prepared with a concise description of the Bidder's capabilities to satisfy the minimum qualifications of Section 2 above and the information requested under Section 3 below. Bidders should organize their proposals so that their responses correspond to the specific subsections to the extent possible without unnecessary repetition.

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**3.02 Required Information**

The proposal shall contain the information described below. Joint ventures should provide the information separately for each firm.

A. Bidder's Prior Experience

1. General Information:

- (i) Please provide a list of the jurisdictions the members of your firm are licensed in and the status of their licenses (only list those who are expected to be assigned to this engagement).
- (ii) Please provide a statement attesting to the fact that the Bidder is in compliance with all federal, state and local laws and regulations and all tax obligations.
- (iii) Within the past three years, have there been any significant developments in your firm such as changes in ownership or restructuring? Do you anticipate any significant changes in the future? Please describe.
- (iv) Has your firm or an attorney in your firm's employ even been disciplined or censured by any regulatory body? If so, describe the principal facts.
- (v) Within the last five years, has your firm, or a partner or attorney in your firm, been involved in litigation or other legal proceedings relating to provision of legal services? If so, provide an explanation and indicate the current status or disposition.
- (vi) Please describe your firm's backup procedures in the event one or more attorneys assigned to the PSC leave the firm. Identify the key attorney who will be the primary contact and lead counsel in providing services to the PSC, whose continuing status as such is an essential element of this contract.

2. Public Utilities Regulation Experience:

- (i) Describe the Bidder's experience in representing clients in public utility regulatory proceedings during the last seven (7) years;
- (ii) Describe the Bidder's experience in Delaware state courts during the last seven (7) years related to public utility regulation issues described above;
- (iii) Provide a brief description of areas of the law related to the purpose of this RFP in which the Bidder has an expertise not already addressed.

B. Conflicts of Interest.

1. The PSC is interested in avoiding even the appearance of impropriety or conflict and, therefore, any doubts in this regard must be resolved in favor of full disclosure. The successful firm(s) shall be required to conform in all respects to the provisions of the Delaware Lawyers' Rules of Professional Conduct, including those relating to conflicts of interest. The successful firm, and its personnel who will perform work for the PSC, must have no financial or business interest directly or indirectly involving the PSC. Even though the firm's employees are not State employees, the firm should read and be familiar with the terms of 29 Del.C. c. 58 "Laws Regulating the Conduct of Officers and Employees of the State" so as to assist the PSC's employees in avoiding any improper conduct.
2. Prior to submitting its Proposal each Bidder shall complete a conflicts check for the State, and its agencies. Each Bidder shall identify any conflicts of interest which may arise if the Bidder serves as Rate Counsel and shall describe in its Proposal how it proposes to deal with such conflicts. Conflicts may arise not only from attorneys' names on the contract but also from representation of parties involved in the transactions or other matters involving the State, by any member of the firm, regardless of whether that attorney is in the same office or a different office of the firm.
3. In general if a conflict of interest arises, the Bidder should be willing to continue to represent the PSC and be in a position to inform other existing or potential clients that they must find representation elsewhere in particular situations. The State may entertain a request for a waiver

of a Bidder's representation of a party in litigation involving a unit of State government other than the PSC. The State reserves the right, in its sole discretion, to select another approved law firm to work on a particular matter if a conflict is not resolved to its satisfaction.

4. The State recognizes that Bidders may have conflicts due to previous representations. The State encourages Bidders with conflicts to submit proposals, identify the conflicts and describe recommended resolutions

## **4.0 PRICE PROPOSAL FORMAT**

### **4.01 Billing Rates**

- A. Current billing Rates for all attorneys assigned to represent the defendants, pursuant to this RFP and any applicable discounts;
- B. Current billing Rates for all para-professionals assigned to represent the defendants, pursuant to this RFP and any applicable discounts;
- C. No compensation will be permitted for the services of law clerks and law school graduates not admitted to practice.

### **4.02 Alternative Pricing Proposals**

Although each Bidder is required to submit a price proposal containing the information set forth in Part 4.1, the PSC will also accept proposals for alternative billing arrangements, which enhance the value and efficiency of the services to be provided. The Bidder may submit a statement, not more than one page in length, with respect to any alternative pricing proposal.

## **5.0 EVALUATION OF PROPOSALS**

The selection committee shall evaluate the proposals. During the evaluation process the selection committee may, at its discretion, request any or all firms to make oral presentations or participate in a formal interview. Such presentation or interviews will provide firms with an opportunity to answer questions about a firm's Proposal. Not all firms may be asked to make an oral presentation or to attend an interview.

### **5.01 Selection Criteria**



The selection of the firm to provide legal services will be based on an evaluation of the Proposals to determine which Proposal reflects the best value to the PSC and the State, with technical factors generally being considered more important than cost of services. The selection of the firm to provide legal services will be based upon the following technical factors in descending order of importance.

- A. Experience of the firm and the individual attorneys representing governmental agencies in public utility rate making;
- B. Experience of the firm and the individual attorneys in representing clients in public utility rate making;
- D. Experience of the firm and the individual attorneys representing governmental agencies generally;
- E. Administrative structure of representation (i.e., proposed staffing assignments), soundness of approach to representation and understanding of the needs of the PSC;
- F. Demonstrated ability to perform the services referred to under Project Scope and Objectives, and
- G. References and recommendations of other clients.

#### **5.02 Contract Negotiation**

The PSC intends to open negotiations with Bidders that the PSC determines have a reasonable likelihood of being awarded a contract based on the proposals submitted. Negotiations will focus on any technical weaknesses or deficiencies in proposals as well as cost and pricing issues.

Selected Bidders will be required to enter into a written agreement with the State of Delaware. The State of Delaware reserves the right to incorporate standard State contractual provisions into any contract negotiated as a result of a proposal submitted in response to this RFP. Any proposed modifications to the terms and conditions of the standard contract are subject to review and approval by the State of Delaware. Vendors will be required to sign the contract for all services, and may be required to sign additional agreements. Each Bidder will be required to comply with the Delaware Department of Justice Outside Counsel Billing Policy, attached hereto as Exhibit A. Each contract must be approved by the Governor of the State of Delaware and the Attorney General of the State of Delaware pursuant to 29 *Del. C.* § 2507.

### **5.03 Contract Award**

The PSC reserves the right to award all, part, or none of this contract. The PSC intends to award a contract to more than one law firm if deemed appropriate and desirable.

## **EXHIBIT A**

***State of Delaware Department of Justice  
Outside Counsel Billing Policy***

**I. Budgeting, billing and staffing**

A. Billing rates will be in effect for entire matter as provided for in the outside counsel contract. Any change must be approved by the Coordinating Attorney in writing 60 days in advance of the effective date of the change in a billing rate.

**B. General Billing practices**

1. Bills to be rendered monthly within 30 days after end of month for entire month. No carry-over billing (example cannot bill from May 1 – June 15).
2. Details of fees by lawyer, paralegal, number of hours by task, description.
3. Expenses/disbursements detail and charges by category.
4. Block Billing of Services is unacceptable. All bills shall be billed in increments of no less than 0.1 billing hour (6 minutes).
5. Time billed for each activity should be identified separately. Do not combine different types of activities in one entry on the invoice. “Block billing” of fees is not acceptable, even if the same individual performed the activities.
6. The description of services or activity should be brief and informative. For example merely listing “Research” is not an acceptable billing entry. An acceptable entry would be "Legal research on statute of limitations issues related to [Insert issue]. An other example would be merely listing “Telephone calls” would not be acceptable, instead "Telephone calls to J. James of [Firm] and M. Smith [of firm] re: motion to dismiss." Be sure to identify the who, what and where.
7. No more than 2 outside counsel attorneys at meetings, depositions, mediations, negotiations, and/or hearings unless pre-approved by the Coordinating Attorney.
8. No firm paralegals at meetings, depositions, mediations, negotiations, and/or hearings unless pre-approved by the Coordinating Attorney.
9. Billable hours for summer interns/clerks will not be allowed unless pre-approved by the Coordinating Attorney.

10. More than 12 hours per day by one member of outside counsel staff will be closely reviewed.
11. Internal conferences accounting for more than 10% total monthly billings closely reviewed. Excessive intra-office conferences between attorneys or paralegals for the purpose of providing instruction or status will be closely reviewed.
12. Excessive number of attorneys performing services in a matter will be closely reviewed, unless prior approval is received from the Coordinating Attorney in writing.
13. Billing for research on general legal issues which should be within the knowledge of the firm and/or associate will be closely reviewed.
14. Billing of hours for work done by multiple attorneys in the firm for similar work on the same issue will be closely reviewed.
15. Billing attorney and/or paralegal time for invoice preparation, review, or for corrections to the invoice is not acceptable.
16. Excessive time spent in “file review” will be closely reviewed.
17. Excessive time spent in “review and revision” of documents that you prepare will be closely reviewed.
18. Charging attorney time for tasks that should be performed efficiently and effectively at less expense by a paralegal or secretary, or charging paralegal time for tasks that should be performed by clerical workers will be closely reviewed. For example charging attorney time for arranging logistics for a deposition.
19. Hours charged at a more senior attorney rate when a matter should be handled by a less senior attorney will be closely reviewed.
20. Charging for secretarial time, and or overtime or other staff members is not acceptable.

C. Expenses/Disbursements

1. Reasonable expenses and fees will be reimbursed. Should you have any questions or concerns whether or not a fee or expense falls within the reasonable expense range or will be reimbursed please contact your Coordinating Attorney for an approval.
2. Examples of non-reimbursable overhead
  - a) Computer, e-mail, word processing charges

- b) Conference room charges, rent
- c) Supplies
- d) Library use, staff
- e) Clerks
- f) Proofreaders charges
- g) Support salaries
- h) Local telephone calls
- i) Fax charges

D. Use of Outside Consultants, Experts and Contract Attorneys. There may be instances where the use of consultants, experts and contract attorneys may be required to staff a case. This should be done as part of the case planning in conjunction with your Coordinating Attorney. These fees should be reasonable and necessary and are subject to approval by the Delaware Department of Justice.